

# **Exhibit 19**

N21nher1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 HERMÈS INTERNATIONAL, et al.,

4 Plaintiffs,

5 v.

22 Civ. 384 (JSR)

6 MASON ROTHSCHILD,

7 Defendant.

8 -----x

New York, N.Y.  
February 1, 2023  
9:30 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge  
13 -and a Jury-

14  
15 APPEARANCES

16 BAKER & HOSTETLER LLP  
Attorneys for Plaintiffs

17 BY: DEBORAH A. WILCOX  
OREN J. WARSHAVSKY  
18 GERALD J. FERGUSON

19 HARRIS ST. LAURENT & WECHSCLER LLP  
Attorneys for Defendant

20 BY: ADAM B. OPPENHEIM  
JONATHAN A. HARRIS

21 LEX LUMINA PLLC  
Attorneys for Defendant

22 BY: RHETT O. MILLSAPS, II  
23  
24  
25

N21nher1

Estival - Direct

1 (Jury present)

2 SONNY ESTIVAL, resumed.

3 THE COURT: Please be seated.

4 Good morning, ladies and gentlemen.

5 Thank you very much for your promptness and we are  
6 ready to proceed.

7 Counsel.

8 MR. HARRIS: Thank you, your Honor.

9 DIRECT EXAMINATION (Continued)

10 BY MR. HARRIS:

11 Q. Good morning, Mr. Rothschild.

12 A. Good morning.

13 Q. Mr. Rothschild, yesterday -- I just want to clarify one  
14 thing. I asked you a question about Virgil Abloh, and you said  
15 he recently had a show at the Whitney Museum.

16 A. I made a mistake. It was actually the Brooklyn museum.

17 Q. That was a show of his artistic works?

18 A. Yes, as well as some of his work in, like, designing  
19 fashion, architecture as well.

20 THE COURT: Lean that microphone down a little bit.

21 Q. When we left off yesterday, Mr. Rothschild, we were  
22 discussing your "Do Not Sit" project.

23 A. Yes.

24 MR. HARRIS: Ashley, could you please put back up  
25 Exhibit 523 in evidence.

N21nher1

Estival - Direct

1 BY MR. HARRIS:

2 Q. Mr. Rothschild, when we left off yesterday, I was asking  
3 you if you created these images by yourself.

4 A. No.

5 Q. How were the images created?

6 A. I'm sorry. I couldn't hear you.

7 Q. Sure. How were the images created?

8 A. The images were created in a 3D program called Houdini by  
9 my assistant, Mark.

10 Q. What is mark's name?

11 A. Mark Berden.

12 Q. Does he work for you or is he a freelancer?

13 A. A freelancer.

14 Q. How did you meet Mr. Berden?

15 A. I met Mark through, like, a freelance website. He had a  
16 portfolio of other 3D works that he did.

17 Q. What was Mr. Burden's role in the creation of the images?

18 A. Pretty much to simulate these 3D images at my direction.  
19 So I would come up with the concept, the subject matter,  
20 composition, materials used, and he could kind of execute on  
21 those.

22 Q. In your experience does, hiring others to help execute an  
23 art project something that artists sometimes do?

24 A. Yes. I mean, to my knowledge, my favorite artists  
25 personally all have, like, massive teams.

N21nher1

Estival - Direct

1 Photoshop, where you just like overlay something. Every single  
2 one of those, like, furs is the color it is a supposed to be.  
3 The way we sold it, you know, utilizing NFTs which was kind of  
4 new and innovative technology at the time we utilized it to  
5 sell art and it was just a vehicle for it.

6 THE COURT: So now I think, forgive me, you are a  
7 little too close to the microphone. Just a little bit back.  
8 That's good.

9 MR. HARRIS: Can we -- we are going to put up, please,  
10 Ashley, Exhibit 227, which is in evidence.

11 BY MR. HARRIS:

12 Q. That, Mr. Rothschild, is the MetaBirkins website, is that  
13 right?

14 A. Correct.

15 Q. I believe there is a date on this, which I may not be able  
16 to see because my screen is a little fuzzy. I see, "Access  
17 December 1, 2021."

18 Do you see that up in the upper right-hand corner?

19 A. Yes.

20 Q. Okay. When were the MetaBirkins themselves released?

21 A. Like for sale? Like, when you could buy them was December  
22 2.

23 Q. Okay. So this is up before the MetaBirkins are actually  
24 for sale?

25 A. Yeah.

N21nher1

Estival - Direct

1 Q. This is metabirkin.com, is that right?

2 A. Yeah, metabirkins.com.

3 Q. Is that a website that you set up?

4 A. Yes. I own the domain and I designed the website.

5 Q. And you registered the domain?

6 A. Correct.

7 Q. Is there anything on this page -- again, it is just a  
8 little blurry, but is there anything on this page indicating  
9 that you are the creator of MetaBirkins?

10 A. Yes. It's says creator Mason Rothschild.

11 Q. Where do I find that?

12 A. The second paragraph it says creator Mason Rothschild began  
13 working on MetaBirkins shortly after the success of Baby  
14 Birkin.

15 Q. And is there anything on this web page indicating that  
16 Hermès was the source of the MetaBirkins?

17 A. Not to me. I said it was a tribute to Hermès, but never  
18 said it was a collaborative artwork.

19 Q. Were you interested in taking credit for the MetaBirkins  
20 project?

21 A. Yes, for sure.

22 Q. Does this web page show -- by the way have you ever used  
23 metabirkins.com for anything other than promoting the  
24 MetaBirkins?

25 A. No.

N21nher1

Estival - Direct

1 Q. Have you ever offered to sell metabirkins.com to anyone?

2 A. No.

3 Q. Now, were you also previewing the images --

4 MR. HARRIS: By the way could you put that back up for  
5 one second, please, Ashley.

6 Thank you.

7 If we could see the one that's broader, if we could  
8 scroll down a little.

9 BY MR. HARRIS:

10 Q. Was this a preview of all 100 images?

11 A. No, these are just kind of my favorites.

12 Q. So if you take a look at these, let's take a look -- could  
13 you -- is there any one of these that you would care to explain  
14 to the jury what your thought process was behind it.

15 A. The second row, the second one next to the really bright  
16 colorful one is actually a Bob Ross inspired one.

17 Q. Okay. That's the second from the right?

18 A. Yeah. The second from the right.

19 Q. The second from the right. Who is Bob Ross?

20 A. Bob Ross is a painter. He's known for like the happy  
21 little clouds and stuff like that, has the big afro.

22 Q. Now, did you review these images at other places?

23 A. Yes. On Discord, which was where the majority of  
24 communications went on for MetaBirkins.

25 Q. What is Discord?

N21nher1

Estival - Direct

1 Q. When you are creating your white list, you also make an  
2 effort to make sure or try to get folks who you might think  
3 would be important collectors or influencers on the white list?

4 A. Sure. Just like traditional art, you would want your art  
5 to go to the best galleries or the best sculptors.

6 MR. WARSHAVSKY: Objection, your Honor.

7 THE COURT: Well, sustained as to form.

8 BY MR. HARRIS:

9 Q. Do you make an effort, when you are creating the white  
10 list, do you make an effort to get anybody on that white list?

11 A. Yes. I try to get it in the hands of good collectors.

12 Q. Why would that be?

13 A. Good collectors have kind of a pedigree for collecting in  
14 this space. So people who are known collectors of different  
15 artworks, you know, utilizing NFTs, friends and family and  
16 celebrities who have a big influence on people.

17 Q. And when the folks purchased the MetaBirkin, they then  
18 received -- what did they actually receive?

19 A. Sorry. Can you repeat the question?

20 Q. Sure. They are on the white list, you are not sure which  
21 one you are going receive, it's randomized, and then on what  
22 day did you release the MetaBirkins?

23 A. So, I believe it was a day or two after where they were  
24 revealed. So they would wait -- everybody had a shroud over  
25 it, and then everybody knew when the reveal date was. They



N21nher1

Estival - Direct

1 would check, we would push the randomization, like, script, and  
2 it randomizes who gets what and you refresh your, like, page on  
3 like OpenSea or something like that, and then you would see  
4 what you got.

5 Q. Then you would have it?

6 A. Yeah. Then you would have it.

7 Q. How much did you sell the MetaBirkins for when they were  
8 minting?

9 A. .1 Ethereum, which is the equivalent of like \$450.

10 Q. At the time?

11 A. At the time.

12 Q. The price of ether fluctuates?

13 A. Yes, significantly.

14 Q. Do you believe you could have sold them for more?

15 A. For sure. The demand was crazy, but that was part of the  
16 experiment.

17 Q. When you say that was part of the experiment, what do you  
18 mean by that?

19 A. I mean, Hermès Birkin bags are known to be sold for  
20 \$12,000, you know, minimum of \$12,000, like they said. So I  
21 said, let me see if I can charge, like, almost nothing for  
22 them, like \$450, and see what the people do with them and see  
23 what they value, is it the image or, like, the product.

24 Q. And did the MetaBirkins -- when you minted the MetaBirkins,  
25 did you keep any for yourself?

N21sHER2

Estival - Direct

1 with you on social media. So I ran a contest on Instagram and  
2 Twitter, and the name was suggested.

3 Q. Was this before or after they were released?

4 A. Before.

5 Q. Can I please put up what's for identification Defendant's  
6 Exhibit 613.

7 Can you briefly describe for the court what this is?

8 A. Um, it's an Instagram post of me, I think, on October 29,  
9 2021, asking -- or saying the collection needs a name, share  
10 this post, and comment your suggestion.

11 Q. And is this your personal Instagram or the MetaBirkins  
12 Instagram?

13 A. This is mine, because it didn't have a name yet.

14 Q. OK. Got it.

15 MetaBirkins hadn't been created yet?

16 A. No.

17 Q. OK. And the *MetaBirkins.com* website hadn't been created?

18 A. Not yet.

19 MR. HARRIS: OK. Your Honor, I offer defense  
20 Exhibit 613.

21 MR. WARSHAVSKY: No objection.

22 THE COURT: Received.

23 (Defendant's Exhibit 613 received in evidence)

24 Q. Do you see that on the black part or that's next to the  
25 picture down in the bottom there's a date.

N21sHER2

Estival - Direct

1 Do you see that?

2 A. Yes.

3 Q. What is that date?

4 A. October 29, 2021.

5 Q. And up at the top, what are you doing here?

6 A. I'm just previewing one. This is, like, the caption of an  
7 Instagram post saying what I'm doing. I said, I guess I knew  
8 what the price was at the time -- at the time already and, um,  
9 just asking people that it needs a name and for people to share  
10 it.

11 Q. And did, in fact, people -- did you post it just on the  
12 contest, just on Instagram, or did you also post it on other  
13 social media?

14 A. I posted it on Twitter.

15 Q. And did somebody suggest names?

16 A. Yes. Actually, I got suggested MetaBirkins on Instagram  
17 and on Twitter.

18 Q. If you look in the middle of this page, there's a  
19 *hectourc* --

20 A. Correct.

21 Q. -- suggested MetaBirkins?

22 A. Yes.

23 Q. Did the contest -- you said there were two, there was  
24 somebody on Instagram and also someone on Twitter.

25 Do you remember the name of the person that suggested

N21sHER2

Estival - Direct

1 it on Twitter?

2 A. Makisa. Her handle is *asiancryptogirl*.

3 Q. Do you know her actual name?

4 A. Makisa. That's just her display name. I don't know her  
5 real name. It could be, but I'm not sure.

6 Q. OK. Did, in fact, the contest winners receive anything?

7 A. One of them did.

8 Q. All right. Who received something?

9 A. Instagram was the first one I saw, so Instagram winner.

10 Q. Did Makisa ever get anything from you?

11 A. Not initially. I didn't see her suggestion initially, but  
12 I called her after the fact because she DMed me. I saw the DM,  
13 I told her to call me, and then promised her one on the next  
14 collection.

15 Q. Did you give Makisa one in the next collection?

16 A. No. We weren't able to launch that second collection.

17 Q. Have you given Makisa anything else?

18 A. Um, just asked her if she wanted, like, any of the other  
19 art projects that are done, since then, that are not  
20 MetaBirkins, but she's not as involved in crypto right now.

21 Q. Does the title of MetaBirkins, why did you pick out of the  
22 various suggestions, why did you pick MetaBirkins?

23 A. Um, I thought it was a good name. People were attaching  
24 Meta before, like, describing what was -- what the artwork was  
25 at the time. You know, Facebook had named its, like,

N21sHER2

Estival - Direct

1 metaverse, you know, Meta and they changed their whole company  
2 name.

3           So it was just a common thing to put it before them.  
4 I thought it represented what we were creating very well. And  
5 to me, Meta, like, I played a lot of video games and stuff, so  
6 in video games, meta means, like, what's happening now, what  
7 the best strategy is in a game, and I felt like it described  
8 fur-free was what was happening now. So it just felt like a  
9 good pairing.

10 Q. I may have asked you this before, but -- I think I did ask  
11 you that question.

12           Did you hope to receive recognition for the work?

13 A. Um, yes.

14 Q. And why?

15 A. I mean, I think everybody wants to receive recognition for  
16 stuff that they do. Artists come with the art that they  
17 accomplish. I love receiving the credit for work.

18 Q. And did you make efforts to promote MetaBirkins?

19 A. Yes.

20 Q. What did you do?

21 A. Promoted it on my personal social media. And after we had  
22 the name, I promoted it on MetaBirkins' social media, promoted  
23 in Discord, which is, like, this big chat. I gifted it to --  
24 not gifted it, but I white-listed different celebrities who had  
25 influence who would, like, post it and share it also to, like,

N21sHER2

Estival - Direct

1 you know, hundreds of thousands or millions of people.

2 Um, as well as, like, whales in the NFT space, which  
3 are, like, big art collectors of -- collectors of NFTs.

4 Q. As an artist, do you try to make an effort to build a  
5 community of people who hold your work or know you?

6 A. Yeah. I feel, like, you know, there is collectors of Andy  
7 Warhol. They probably all chat with each other and hang out.  
8 I think it's important, especially in this new, kind of, day  
9 and age, to be able to garner the attention of a community and  
10 keep them updated on everything that you're working on.

11 Like, for example, with me, people know I work on --  
12 at Terminal, and they know I have Terminal. And in return they  
13 see everything that we're working on, and it gives them that  
14 feel that we're kind of, like, all in it together.

15 Q. Now, did you ever send any text messages about promoting  
16 MetaBirkins?

17 A. Um, I'm sure I did.

18 Q. And why would you do that?

19 A. Um, because that's how I communicate with help through text  
20 message.

21 Q. And did you hope that MetaBirkins would increase in value?

22 A. Um, I could only hope so, but, I mean, I can't predict what  
23 happened.

24 Q. Did you tell people that you hoped it would increase in  
25 value?

N21sHER2

Estival - Direct

1 are, like, who collect NFTs or participate in Web3. It's at  
2 the very infancy stage right now, so it's very um, like, a frat  
3 or, like, a very bro-ish type of talk.

4 Q. And you were never a fraternity member, were you?

5 A. No.

6 Q. But very briefly for the jury, because I think it's the  
7 first time the term came up, excuse me if I'm wrong, what is  
8 Web3?

9 A. Web3 is kind of what we're in right now. So, like the  
10 easiest way to describe it is Web1 is when you would log in  
11 with your e-mail and password.

12 Web2 is kind of, like, the next evolution of that,  
13 where you log in with, like, Google. You know, it says sign in  
14 with Google or sign in with Amazon.

15 Web3 is signing in with a wallet, which is, like, your  
16 source of identification. You have a seat phrase about, like,  
17 self-custody.

18 Q. When you say sign in with a wallet, your referring to like  
19 a crypto wallet?

20 A. Yeah, a crypto wallet.

21 Q. And, Mr. Rothschild, do you think you can get away with  
22 things in art by saying "in the style of?"

23 A. Um, no, not necessarily.

24 Q. All right. Did you ever send a text message along those  
25 lines?

N21sHER2

Estival - Direct

1 A. Um, yes.

2 Q. What were you thinking when you sent that?

3 A. Um, when I said get away with, I was, kind of, referring to  
4 the situation. I was speaking about this situation that we're  
5 in today, where I should be able to get away with creating this  
6 artwork, um, because it's my artistic expression and, you know,  
7 a company like Hermès shouldn't be able to sue me for it.

8 Q. Mr. Rothschild, is everything you did with MetaBirkins  
9 public?

10 A. Um, yes. I mean, every communication is on Discord, which  
11 is a public place. Anybody could join and all my transactions  
12 are public on the blockchain.

13 Q. Did you have any ability to get away with anything in  
14 secret with MetaBirkins?

15 A. Um, I don't think so, especially not at this stage, you  
16 know, of discovery.

17 Q. Did you tell friends in text messages you might be  
18 collaborating with Hermès?

19 A. Yes, at some point.

20 Q. And why?

21 A. Um, I work in fashion, so I know a lot of people in  
22 fashion. And one of those people, um, was a high-ranking  
23 member at a big, um, company called Yoox, said he had  
24 connections at Hermès. And numerous people told me this, and  
25 they said that they would try to get them on the line with me.



N21sHER2

Estival - Direct

1 the Discord server, you can see how many people have joined  
2 your server. There was 50,000 people going for 100 different  
3 items, right. Um, so, you know, it's a standard supply-and-  
4 demand thing. You know, there was only 100, but there was  
5 50,000 people who wanted them. What happens there, what do the  
6 people do with it.

7 Q. Take that down, please, Ashley.

8 Mr. Rothschild, who is Ken Loo?

9 A. It's my publicist.

10 Q. What is your current relationship with Mr. Loo?

11 A. Um, he's currently still by publicist.

12 Q. And did he work on the MetaBirkins project?

13 A. He was my publicist for it, but he didn't, like, make  
14 anything or do any part of the creative.

15 Q. Did you ask Mr. Loo to make it known that you were the  
16 creator of the MetaBirkins?

17 A. Um, yes.

18 Q. And what did you ask Mr. Loo to do?

19 A. Honestly, we were fielding a bunch of, like, press requests  
20 and stuff. So Ken, as my publicist, is tasked with making sure  
21 that I was credited for it, used the proper images, they don't  
22 post, like, the wrong images -- there was a lot of fake  
23 collections going on at the time -- and if they needed a quote  
24 from me for the article.

25 Q. And did Mr. Loo give any instructions as to how he was to

N21sHER2

Estival - Direct

1 characterize the source of the MetaBirkins?

2 A. Yeah. It was always to make sure it was not, um, a  
3 collaboration or done by Hermès. We have corrected the press  
4 on numerous occasions where they accidentally said it was  
5 Hermès and we said, Hey, like, that's incorrect.

6 You know, I have Google alerts which tells me every  
7 time something gets published by me or has my name or  
8 MetaBirkins. I was constantly monitoring it, making sure  
9 nothing wrong was written in the press.

10 Q. Did you ever become aware, Mr. Rothschild, that any  
11 purchasers of MetaBirkins were confused as to whether you were  
12 the creator?

13 A. No.

14 Q. Did you ever need to correct any purchaser of a MetaBirkins  
15 as to the source of the goods?

16 A. Um, no.

17 Q. You testified just a little bit ago that you kept one  
18 MetaBirkin for yourself, right?

19 A. Correct.

20 Q. And when the MetaBirkins were originally minted, how many  
21 of them did you get?

22 A. I minted one and then, um, one of my engineers had minted  
23 one to test the contract. And then my other one, I had two  
24 engineers, and they minted two of them prior to me. The first  
25 three that get minted, I think, um, I forget the name of the

N21sHER2

Estival - Direct

1 MR. HARRIS: Can we please -- I believe this is in  
2 evidence, Exhibit 146. Could you just show it to me please  
3 just for the judge and the witness.

4 Is that in evidence?

5 MR. WARSHAVSKY: I believe so. Yes, absolutely.

6 MR. HARRIS: Please go ahead.

7 BY MR. HARRIS:

8 Q. What is that image of?

9 A. It's, like, a fuzzy horse.

10 Q. And was that going to be a 2D or 3D image?

11 A. Also 2D.

12 Q. Could anyone have ridden their fuzzy horse in the  
13 metaverse?

14 A. No.

15 Q. And what was the thought for the fuzzy horse?

16 A. It was partially, you know, because Hermès makes this, kind  
17 of, fuzzy horse charm. And, two, it was kind of, like, at the  
18 time, I have a couple horse tattoos. I really like horses, and  
19 I just like wanted to give people a gift for supporting me in  
20 NFTs. You know, everybody who owns your artwork by -- not by  
21 name or anything, but by their wallet. It's a common thing to  
22 be able to AirDrop something into their wallet that is, like, a  
23 surprise.

24 Q. Since you raised the tattoos, you also have other art  
25 tattoos?

N21sHER2

Estival - Direct

1 A. Yes. I have a Damien Hirst skull on my arm, and I have a  
2 couple Francisco de Goya etchings, a bullfighter, and I have  
3 this one right here, horse tattoo. I got a bunch.

4 Q. Mr. Rothschild, you said the Hermès horse was fuzzy.

5 Is it fuzzy?

6 A. Furry.

7 Q. What?

8 A. Furry.

9 Q. Yours is furry.

10 Is Hermès'?

11 A. I think it's just leather.

12 Q. So you were making a -- I just want to understand.

13 You were making a fuzzy image of an Hermès that is a  
14 leather?

15 A. Yeah. Pretty much, like, the MetaBirkins.

16 Q. OK. Did you ever release the additional MetaBirkins, the  
17 banana one, to be minted?

18 A. No.

19 Q. Did you ever gift the horse image?

20 A. No.

21 Q. Why not?

22 A. I had a cease and desist and eventually got sued, so I  
23 didn't want to continue to push things out while there is  
24 litigation happening.

25 Q. What did you do after receiving the cease and desist?

N21sHER2

Estival - Direct

1 A. I got a lawyer, um, who are in this room right now to  
2 handle the response, because I'm not a lawyer.

3 Q. Did you ask that lawyer to reach out to Hermès?

4 A. Yes.

5 Q. Did there come a time where you were sued by Hermès?

6 A. Yes.

7 Q. And when was that?

8 A. I think it was mid January.

9 Q. Of?

10 A. 2021 or two -- 2022, sorry.

11 Q. And how did you learn you were sued?

12 A. In the press.

13 Q. And were you served a lawsuit?

14 A. Um, we accepted service via e-mail. They had my e-mail.  
15 They had my lawyer's e-mail. They had my address. Um, but  
16 they -- I guess they decided that that wasn't enough, so they  
17 decided to serve me at work a few different times.

18 Q. When you say serve you at work a few different times, can  
19 you describe that?

20 A. They had their process server come to my store, Terminal 27  
21 in Los Angeles, hold up a picture of me, and ask our customers  
22 and employees if they knew me.

23 Q. Had they just e-mailed it to you, would you have accepted  
24 service?

25 A. Oh, yes. We told them we would accept this service by

N21nher3

Estival - Direct

1 Q. Did there come a time when you did a project called, "I  
2 Like You, You're Weird"?

3 A. Yeah.

4 Q. And what is that project?

5 A. It's 10,000 kind of cartoon little, like, cartoons we  
6 called Weirdos.

7 MR. HARRIS: Ashley, could you put up for  
8 identification Defendant's Exhibit 525.

9 BY MR. HARRIS:

10 Q. Could you briefly describe for the Court and counsel what  
11 Defendant's Exhibit 525 is.

12 A. It's the OpenSea page of the "I Like You, You're Weird"  
13 collection.

14 MR. HARRIS: Your Honor, I offer Defendant's Exhibit  
15 525.

16 MR. WARSHAVSKY: No objection, your Honor.

17 THE COURT: Received.

18 (Defendant's Exhibit 525 received in evidence)

19 MR. HARRIS: Your Honor, may I have 30 seconds --  
20 less, 10 seconds -- just to ask a question?

21 Thank you, your Honor.

22 BY MR. HARRIS:

23 Q. Could you please describe for the jury what these images  
24 represent and maybe pick one out.

25 A. Yeah. It was a character that me and my partner at the

N21nher3

Estival - Direct

1 time had created. It's kind of like a way for people to  
2 represent themselves like for their profile picture or anything  
3 like that. We kind of created a community around it.

4 Q. When you said your partner, did you have a partner for this  
5 project?

6 A. Yes.

7 Q. Who is that?

8 A. Amber Park.

9 Q. Who is Amber Park?

10 A. She is a Korean-American artist both me and my fiancée have  
11 known for about a decade and we decided to jump in to do a  
12 project together.

13 Q. Were these NFTs?

14 A. Yes.

15 Q. Can we just -- I am just picking a Weirdo on the right.  
16 Weirdo 4100.

17 A. Yeah.

18 Q. Okay. How was this Weirdo created?

19 A. It was illustrated, and then we illustrate all the  
20 different kind of traits and stuff and then we put them into a  
21 randomizer and it will change the body. It will give them a  
22 different head, a different mouth, a different set of eyes, a  
23 hat, and, like an ear.

24 Q. So you create the base parts?

25 A. Yeah.

N21nher3

Estival - Direct

1 Q. Like you create the eyes?

2 A. It's like Mr. Potato Head.

3 Q. Okay. All right. And then they are put together. Got it.

4 This Weirdo 4100, this is OpenSea. OpenSea as we discussed  
5 before somewhat in this trial, that's a site where you can buy  
6 and sell --

7 A. NFTs.

8 Q. -- NFTs.

9 Did Weirdo 4100, was he sold?

10 A. Yeah. We sold 10,000 of these in less than 24 hours.

11 Q. You sold 10,000 meaning yourself and Ms. Park --

12 A. Correct.

13 Q. -- sold 10,000 of them?

14 A. Yes.

15 Q. Was that the entire release?

16 A. Yes.

17 Q. What we are looking at here, would this be somebody  
18 reselling it or thinking of reselling it?

19 A. Yes. They are reselling it.

20 Q. So I would buy this Weirdo, but it wouldn't be from you?

21 A. Yeah. It would be from the person who owned it after  
22 purchasing it.

23 Q. And do you get a piece of the --

24 A. We did initially, but we turned off the royalties on the  
25 project.



N21nher3

Estival - Direct

1 Q. So you do not get royalties on it?

2 A. Not today.

3 Q. You sold the 10,000. How much did you sell them for?

4 A. I think it was .08 Ethereum at the time. I am not sure  
5 what the equivalent was at the time.

6 Q. Okay. And you could have sold -- if you sold them out, you  
7 said in 48 hours, is there a reason you didn't make more?

8 A. We did make more. That collection called "I Hate You,  
9 You're Scary." So you would be able to burn your artwork to  
10 get the new one.

11 Q. Okay. Let's talk about that.

12 MR. HARRIS: Would you please put up for  
13 identification, please, Ashley, DX 527.

14 BY MR. HARRIS:

15 Q. And could you please briefly describe for the Court and  
16 counsel what it is we are looking at?

17 A. This is the OpenSea page, "I Hate You, You're Scary."

18 Q. Very briefly, what is "I Hate You, You're Scary"?

19 A. They are like the anti-Weirdos. We are telling a story  
20 with this whole thing, you know, like, where these are kind of  
21 like the antagonists of the Weirdos, so they're kind of a  
22 little bit darker and scarier looking.

23 MR. HARRIS: Your Honor, I offer DX 527.

24 MR. WARSHAVSKY: No objection.

25 THE COURT: Received.

N21nher3

Estival - Direct

1 (In open court)

2 THE COURT: You may step down.

3 I wanted to put on the record, both my reasons for  
4 previously granting the motion *in limine* to exclude the  
5 testimony of Dr. Gopnik and also my ruling earlier this morning  
6 to allow the testimony of Dr. Kominers.

7 Dr. Gopnik is offered as an expert on "business art,"  
8 but both in his report and in his deposition he fails to  
9 identify in any meaningful fashion what his methodology is for  
10 he applied it in this case, which, of course, are the express  
11 requirements, among others, of Rule 702 of the Federal Rules of  
12 Evidence.

13 Now, for example, he testified in his deposition,  
14 "There is no consensus among art historians about anything, so  
15 there cannot be a consensus on fur-covered Birkin bags."

16 Okay. Now, that's not the end of the subject because  
17 experts can disagree, but it certainly means that there is not  
18 a general acceptance of any particular approach to what is or  
19 is not business art.

20 Then he goes on to say when specifically asked for his  
21 methodology, he stated, that, well, he "looks at the larger set  
22 of contextual clues that tell you, oh, this might be worth  
23 looking at as an artist's activity."

24 When asked to define what that sentence meant, he  
25 refused, or declined I should say, and never offered a

N21nher3

Estival - Direct

1 systematic definition for business art.

2 So basically this is just his personal opinion. That  
3 doesn't do it anymore. There was a time before Rule 702 was  
4 amended where arguably that may have been allowed, but 702 was  
5 amended to require an expert to demonstrate as a precondition  
6 of admissibility a reliable methodology.

7 I might also add, though I don't think it's necessary  
8 to reach this, that under the *Kumho Tire* case and other  
9 subsequent cases even nonscientific evidence from experts  
10 should be viewed at least somewhat in light of the *Daubert*  
11 factors.

12 His opinion, near as I can tell, wouldn't meet any of  
13 the *Daubert* factors. It not only hasn't been tested, it is on  
14 its face untestable, unfalsifiable. It has no known error  
15 rate. It has not been peer reviewed. And it has not been  
16 generally accepted. In fact, it is as he explains it  
17 essentially a hunch or a purely subjective opinion.

18 So that's why I excluded Dr. Gopnik.

19 Now, Dr. Kominers is giving an economic analysis based  
20 on his background as a professor of business at Harvard  
21 Business School, where, among other things, he studies the  
22 economics and market design of NFTs. His analysis and his  
23 methodology are quite clear. He does a comparison between how  
24 NFTs that are associated with other brands operate in the  
25 marketplace, the other brands being brands that expressly

N21nher3

Estival - Direct

1 entered into the NFT marketplace. And he compares that to what  
2 happened in the MetaBirkin marketplace, and he concludes that  
3 the effect was, in his view, solely or wholly comparable to  
4 what happens to those other brands and, therefore, reflected  
5 the consumers' and the sellers' and purchasers' belief that  
6 this was an Hermès Birkin bag product.

7 Now, there are lots of questions I am sure he will be  
8 asked on cross-examination about that, but the methodology is  
9 clear. The relevance to numerous factors both under the  
10 *Polaroid* factors and under the *Rogers* test is clear. So  
11 there's no comparison between him and Dr. Gopnik.

12 So those, without further elaboration, are the bases  
13 for my rulings. I will give you another ten minutes for the  
14 break and then we will resume with cross-examination of  
15 Mr. Rothschild.

16 Let me mention one other thing. At the end of the  
17 lunch break today, I am going to want you to give me who are  
18 the remaining witnesses and a reasonably good idea of how long  
19 each witness is going to be -- I know you can't predict that  
20 with certainty at this point -- so that we can schedule things  
21 like the charging conference and things like that.

22 Okay. Real good.

23 (Recess)

24 MR. WARSHAVSKY: May I raise one issue with the Court  
25 before the jury comes in, your Honor.

N21nher3

Estival - Cross

1 Q. Here you start saying, "Let's do another series of  
2 Birkins," correct?

3 A. Yes.

4 Q. Is this the first time you -- well, let me ask it  
5 differently. Were you referring to NFTs?

6 A. Yes.

7 Q. Was this the first time you discussed these NFTs?

8 A. I am not sure.

9 Q. And here, because the name hadn't come up yet, you were  
10 just referring to them as Birkins, correct?

11 A. Yes.

12 Q. When you say "another series," what do you mean by  
13 "another"?

14 A. This is after Baby Birkin.

15 MR. WARSHAVSKY: If we could turn to page 6.

16 BY MR. WARSHAVSKY:

17 Q. Mark asks you, "NFTs?"

18 And you respond, "NFTs."

19 Do you know why that was the question and answer  
20 there?

21 A. Sorry. Can you repeat the question.

22 Q. Sure. Do you know Mark used the word "NFTs"?

23 A. Because it's Baby Birkin and an NFT.

24 Q. Do you know why you use the word "NFTs"?

25 MR. WARSHAVSKY: Scroll down.

N21nher3

Estival - Cross

1 A. Because that's what Baby Birkin was. When I said another  
2 series, we referred to creating another NFT.

3 Q. Throughout this discussion -- and you can look in your book  
4 if you like -- did you ever use the word "art"?

5 A. No.

6 MR. WARSHAVSKY: If we could show the Court and the  
7 other side Plaintiff's Exhibit 316.

8 Humberto, I'm not sure -- plaintiff's Exhibit 316,  
9 Humberto.

10 Okay. Thank you.

11 BY MR. WARSHAVSKY:

12 Q. Mr. Rothschild, have you seen this before, this document  
13 before?

14 A. It looks to be a text message chain.

15 Q. Who is the text exchange between?

16 A. Me and Kenneth Loo.

17 Q. Who is Kenneth Loo?

18 A. My publicist.

19 Q. And this is a document you produced in this case?

20 A. I believe so, yes.

21 Q. What was your primary way of communication with Kenneth  
22 Loo?

23 A. Text message.

24 MR. WARSHAVSKY: I move it into evidence, your Honor.

25 MR. HARRIS: Your Honor, I have no objection.

N21nher3

Estival - Cross

1 THE COURT: Received.

2 (Plaintiff's Exhibit 316 received in evidence)

3 BY MR. WARSHAVSKY:

4 Q. Please turn to page 2. Can you read the last text you sent  
5 to Kenneth Loo?

6 A. "I'm making 13 Birkin NFTs."

7 Q. And in this text chain, which you also have in the book, do  
8 you ever refer to the project as "art"?

9 A. No, because I was creating NFTs that are attached to art.

10 Q. That wasn't my question, Mr. Rothschild.

11 MR. WARSHAVSKY: I will actually, your Honor, move to  
12 strike.

13 THE COURT: Well, I will strike everything after the  
14 word "no."

15 MR. WARSHAVSKY: Thank you, your Honor.

16 THE COURT: So if a question can be answered simply  
17 yes or no, just answer yes or no. If it requires a further  
18 explanation, of course, then you may answer, and I will  
19 determine whether it's appropriate or not, but I think that  
20 question could be answered yes or no.

21 Go ahead.

22 THE WITNESS: Got it.

23 BY MR. WARSHAVSKY:

24 Q. I'm sorry. Looking through the document, the entire  
25 document --

N21nher3

Estival - Cross

1 A. What number was that again?

2 Q. This was 316.

3 My question is, do you say "art" anywhere in the  
4 document?

5 A. No.

6 MR. WARSHAVSKY: Can you please show the Court and the  
7 other side Exhibit 243, please.

8 BY MR. WARSHAVSKY:

9 Q. Have you seen this document before?

10 A. Yes.

11 Q. Can you tell us what this is?

12 A. Another text message chain.

13 Q. Between whom?

14 A. Myself and Mark.

15 Q. You produced this in litigation?

16 A. Yes.

17 MR. WARSHAVSKY: Move it into evidence, your Honor.

18 MR. HARRIS: Your Honor, it is going to be more than  
19 three words. Can we have a quick sidebar?

20 THE COURT: All right.

21 (Continued on next page)

22

23

24

25



N21nher3

Estival - Cross

1 (At sidebar)

2 MR. HARRIS: Your Honor, it is a very long chain. My  
3 guess is I won't object to the part that Mr. Warshavsky is  
4 seeking to introduce, but I really don't have the ability to --

5 THE COURT: So why don't I receive it without  
6 prejudice to your raising objections as he goes through it to  
7 specific items, and I will rule right then and there.

8 MR. HARRIS: Okay.

9 THE COURT: What is the nature of your objection?

10 MR. HARRIS: It would be hearsay, your Honor.

11 MR. WARSHAVSKY: Your Honor, can I respond to that as  
12 long as we are at sidebar?

13 THE COURT: Yes.

14 MR. WARSHAVSKY: We heard from this witness that this  
15 is an individual that he hired, that his communications were by  
16 text, and they were stored on his cell phone, which would  
17 suggest to me that is a business record between this witness  
18 and his employee for these purposes. Therefore, it comes  
19 within the hearsay exception.

20 I don't think we are going to be offering most of this  
21 for the truth of the matter asserted, but to avoid this  
22 issue --

23 THE COURT: I don't think you have established enough  
24 to show this is a business record. The mere fact that the  
25 person was an employee doesn't mean that this is a business

N21sHER4

Estival - Cross

1 BY MR. WARSHAVSKY:

2 Q. So when he said he could get 40 to 50 out per day for two  
3 to three days, that meant it took -- it would only get one out  
4 in two to three days, is that what you just said?

5 A. 40 to 50 per day, as it says.

6 Q. So he was talking about generating the MetaBirkins?

7 A. Yes.

8 Q. OK. And he was saying here, he could generate 40 to 50 per  
9 day?

10 A. Yes.

11 MR. WARSHAVSKY: Shrink out of that. Turn to page  
12 six, five and six so the witness can see it in context.

13 I think we just saw page four. Now we can look at  
14 page five and six.

15 Here, you're discussing --

16 Q. Let me know when you've read it.

17 A. Yes.

18 Q. So here, you and Mark Design are talking about the profits  
19 you expect to make from the second collection of MetaBirkins  
20 NFTs, is that correct?

21 A. Yes.

22 Q. OK. And then you're also talking about at the bottom here,  
23 where it starts, yeah, I'll start on those specials ASAP.

24 Do you see that discussion?

25 A. Yes.

N21sHER4

Estival - Cross

1 Q. Do you want to see the following page seven to for context?

2 MR. WARSHAVSKY: If you can unzoom that, please, and  
3 go to the top of seven.

4 Q. Here you say, so Mark Design could hammer these out,  
5 correct; you're still talking about the MetaBirkins, right?

6 A. Second collection, yes.

7 Q. And so the goal here was to generate 50 images a day,  
8 correct?

9 A. Um, that wasn't a goal. That is what Mark said he could  
10 do.

11 Q. OK. So you had the plans for the second NFT collection,  
12 correct, this is what this is all about, the second MetaBirkins  
13 collection?

14 A. Yes.

15 Q. This is what this is all about?

16 MR. WARSHAVSKY: Can we go to Plaintiff's 306.

17 Furnish to the court and the other side, not to the  
18 jury. I don't believe it's been admitted.

19 Q. OK. So this is a text exchange between you, Truman Sachs  
20 and Alex Sachs, correct?

21 A. Yes.

22 Q. It was produced by the Sachs, Truman Sachs in this case,  
23 right, if you know?

24 A. I don't know, but yeah.

25 Q. But it is a text exchange between the three of you, only

N21sHER4

Estival - Cross

1 Q. OK. Well done. OK.

2 You start by saying there is going to be 500 meh ones.  
3 What did you mean by that?

4 A. Simple ones.

5 Q. And what did you mean by simple ones; does that mean like  
6 one color?

7 A. Like, one color.

8 Q. One color was meh, and then you said 300 all right ones.

9 What does all right ones mean?

10 A. Just, like, working up the scale of, like, cool factor.

11 Q. And then 90 cool ones, I guess is that further up that  
12 scale?

13 A. Yeah. They are cooler.

14 Q. Then ten super specials?

15 A. Yeah.

16 Q. And is a super special something like the Mona Lisa one, is  
17 that what you mean by that?

18 A. No. This is, like, some that were, like, covered in slime  
19 and some were, like, had, like, mammoth tusks coming out of  
20 them. There was, like, a lot of work done on them.

21 Q. So where would the Mona Lisa one be in this range?

22 A. It was different. I mean, MetaBirkins, the original  
23 collection of MetaBirkins was all, kind of, they didn't have  
24 any additional, um, elements to them, like 3D elements to them,  
25 like, tusks or anything. They were all just simulated fur with

N21sHER4

Estival - Cross

1 a graphic.

2 And for this next collection, we really wanted to,  
3 like, go above and beyond. So you saw the banana earlier today  
4 duct-taped to the bag and, like, a bunch of different ones.

5 Q. Let me stop you there.

6 Where would the banana be on this range?

7 A. The cool ones.

8 Q. That would be a cool one.

9 And so would Mona Lisa be an all right one or meh one?

10 A. Can I explain a little bit more in depth?

11 It's not really yes or no.

12 Q. We can pick a different one. You showed a few.

13 A. Yeah. I mean, for the Mona Lisa one, the goal of that  
14 first collection was -- you didn't know what you were going to  
15 get. So do people value the Mona Lisa one versus all red one,  
16 you know, like, people attribute more value to the one that had  
17 the Mona Lisa on it. It's kind of the -- to the eye of the  
18 beholder. People are only willing to pay -- or they give a  
19 price to whatever. It's whatever somebody is willing to pay  
20 for the one that they want.

21 Q. OK. I understood that. I guess what I'm trying to  
22 understand is what would count as, on this scale of coolness,  
23 would the Mona Lisa rate anywhere on this one?

24 A. It's hard to say because the ten supers are the ones that  
25 have extra work. 90 cool ones, I would say the Mona Lisa, it

N21sHER4

Estival - Cross

1 would be a super in terms of, like, what people value it at.

2 But in terms of the work put into it to create it, it would be  
3 on, like, the all right scale.

4 Q. It would be the all right one. OK. Thank you.

5 If we can turn to Plaintiff's Exhibit 235. This is  
6 another text message between you and Mark, correct?

7 A. Um-hmm.

8 Q. This was also produced in discovery by you?

9 A. Yes.

10 MR. WARSHAVSKY: Subject to the same objection, we  
11 would offer into evidence, your Honor.

12 MR. HARRIS: Same, your Honor.

13 THE COURT: Same ruling. Received.

14 (Plaintiff's Exhibit 235 received in evidence)

15 MR. WARSHAVSKY: We can furnish to the jury.

16 And if we could turn to page -- well, pages one and  
17 two, if you can show it to the witness.

18 Q. Here you're talking about making more MetaBirkins, right?

19 A. Yes.

20 Q. And, once again, we're talking about the time scale and  
21 what Mark can do, regardless of what the time scale is, you're  
22 trying to understand how much Mark can make here?

23 A. To a certain extent, yes.

24 Q. Now, let me ask you a totally different question.

25 Have you heard of the term blue chip?

N21sHER6

Estival - Cross

1 Q. But he's not credited anywhere?

2 A. No.

3 Q. Just you and Eric Ramirez?

4 A. Yes.

5 Q. And this sold for much more, correct, ten times that  
6 amount?

7 A. Approximately.

8 Q. And, by the way, did you bid on the Baby Birkin yourself?

9 A. No.

10 Q. No. Do you remember me asking you about this at your  
11 deposition?

12 A. I was the first bid.

13 Q. So you did bid on it?

14 A. Yes.

15 Q. So had you won the bid, you would have bought it from  
16 yourself?

17 A. For 100, yes. It would be minted.

18 Q. OK. Was that an effort to prop up the price?

19 A. No, it was just to -- I wanted to own my artwork. So,  
20 like, when you bid, it would have to be minted. So it wasn't  
21 minted until somebody bid on it.

22 Q. OK. And at that time, you didn't -- you didn't have a  
23 *BabyBirkin.com* website, did you?

24 A. No.

25 Q. You didn't ask anybody to pump and chill for that, did you?

N21sHER6

Estival - Cross

1 A. Um, not that I recall. But, I mean, like, people knew  
2 about it, told people about it, and we did promote it to NFT  
3 collectors at the time.

4 Q. OK. Well, in this case, again, I think we heard your  
5 lawyer in opening statement say that you produced thousands of  
6 text messages.

7 Were any of those text messages about pumping and  
8 chilling the Baby Birkin?

9 A. I'm not sure.

10 Q. OK. And you only made one, correct?

11 A. Yeah.

12 Q. And we'll get into it a little bit later.

13 For the MetaBirkins, you had to build a MetaBirkins  
14 campaign, correct?

15 A. It was a contest.

16 Q. You didn't do that for Baby Birkin, did you?

17 A. No.

18 Q. Just to contrast, just to finish this thought, for the  
19 MetaBirkins you made 100, correct?

20 A. Yes.

21 Q. You made a *MetaBirkins.com* website, correct?

22 A. Yes.

23 Q. You made social media accounts, including Twitter,  
24 Instagram, and Discord, correct?

25 A. Yes.



N21sHER6

Estival - Cross

1 Q. And that is something you didn't do for prior projects?

2 A. No, because they were just one.

3 Q. And in some of your promotion, you actually encouraged  
4 others to make MetaBirkins with household items like the  
5 MetaBirkins, like the build-your-own MetaBirkin, correct?

6 A. Yes.

7 Q. And as you discussed with counsel, we'll discuss in a  
8 little bit, you actually asked influencers to pump and chill  
9 for you for the MetaBirkins, correct?

10 A. Yes.

11 Q. And you sought whales to sweep the floor, am I saying that  
12 correctly?

13 A. Um-hmm.

14 Q. And is that correct?

15 A. Yes.

16 MR. WARSHAVSKY: OK. Let's talk a little about the  
17 MetaBirkins name and slogan.

18 Now, Humberto, can you please bring up Exhibit 238,  
19 just to the witness, the court and defense counsel, please.

20 Q. OK. Have you seen this document before?

21 A. Yes.

22 Q. Can you tell us generally what it is?

23 A. It is the same post from Instagram announcing what was to  
24 eventually be called MetaBirkins and then asking people to  
25 suggest names.

N21sHER6

Estival - Cross

1 Q. OK. But it's a Twitter post on your account?

2 A. Yes.

3 MR. WARSHAVSKY: Move into evidence, your Honor.

4 MR. HARRIS: No objection.

5 THE COURT: Received.

6 (Plaintiff's Exhibit 238 received in evidence)

7 Q. OK. So this is the contest, the other side of the contest  
8 that you ran on Twitter, right?

9 A. Yes.

10 Q. And as you said, you were requesting names and --

11 MR. WARSHAVSKY: Oh, I'm sorry. Humberto, please  
12 furnish to the jury.

13 Done?

14 OK. One step ahead of me.

15 Q. This is where you were requesting the names, and I think  
16 earlier you noted that someone named Makisa had responded,  
17 correct?

18 A. Yes.

19 Q. And actually, if we can go down, I guess, to the Makisa  
20 response. You see it on the page. Can you maybe blow it up a  
21 little bit.

22 Clearly that same day she wrote back to you  
23 MetaBirkin, correct?

24 A. Yes.

25 Q. And earlier when you spoke, you said the reason that you

N21sHER6

Estival - Cross

1 didn't provide something to Makisa was because you received a  
2 response on Instagram, is that correct?

3 A. Yes.

4 Q. Do you remember I asked you about this at your deposition?

5 A. Yes.

6 Q. OK. And do you remember what you responded at your  
7 deposition?

8 A. Um, I think I responded incorrectly, but I looked after the  
9 deposition to verify.

10 Q. So at your deposition when you were testifying under oath,  
11 what you did you say to us?

12 A. I would have to get a reminder. I think I said that --

13 Q. We'll show it to you.

14 Can we furnish the witness and his counsel with his  
15 deposition testimony.

16 So do you see where I'm looking at line 15 to 18?

17 A. Yes.

18 MR. HARRIS: Do you have a hard copy?

19 MR. WARSHAVSKY: Do I have a hard copy?

20 MR. HARRIS: I'm sorry. What page is this, please?

21 BY MR. WARSHAVSKY:

22 Q. What response did you give to me at your deposition?

23 A. We ended up coming up with a name prior to this actually.  
24 We had a few variations.

25 Q. So now you're saying that that testimony was wrong?

N21sHER6

Estival - Cross

1 A. That testimony was incorrect. I looked it up after.

2 MR. WARSHAVSKY: OK. If we can go back to the Twitter  
3 post, please.

4 The Twitter post -- sorry. If we can go to  
5 *JessLozano*. I don't know how to pronounce it.

6 Down a little. There you go.

7 Can you please blow up the two November 3 ones.

8 Q. This user -- I'm not sure how to say that -- wrote back and  
9 in the first post on November 3 said Not Your Mom's Birkin.

10 Do you see that?

11 A. Yes.

12 Q. OK. And ultimately you used Not Your Mother's Birkin as  
13 your slogan on your website, correct?

14 A. Yes.

15 Q. Did you give this person a MetaBirkin?

16 A. No, because it was not the name.

17 Q. Oh, because it was Not Your Mother's Birkin rather than Not  
18 Your Mom's Birkin?

19 A. Yes. And we also knew of this Slogan. Tiffany's was using  
20 it at the time to describe Not Your Mother's Tiffany.

21 Q. I see. So, well, all right. We can close this exhibit.

22 So you used the same -- I'm sorry.

23 Who was using it?

24 What was the name of that person?

25 A. Tiffany's.

N21sHER6

Estival - Cross

1 Q. You were using the Tiffany's logo, you just changed it to  
2 Birkin?

3 A. There was no logo.

4 Q. I'm sorry. Slogan?

5 A. Um, the slogan is people attach not your mother's to a lot  
6 of things, like, not your mother's cheesecake or not your  
7 mother's cooking or something like that. It's a common saying,  
8 but I've seen the ads from Tiffany's most recently.

9 Q. So Tiffany's doesn't an ad for itself Not Your Mother's  
10 Tiffany?

11 A. I think so. It's something like that.

12 Q. OK. But you didn't say Not Your Mother's MetaBirkin, you  
13 said Not Your Mother's Birkin, correct?

14 A. Yes.

15 MR. WARSHAVSKY: OK. So let's take a look at your  
16 website for a second.

17 You know what, if we can look at actually Plaintiff's  
18 Exhibit 227. I'm going to try to cut through a few of these.  
19 If we can blow it up a little bit.

20 You know, I'm sorry. Has this been admitted? It has,  
21 right? OK. So the jury should be able to see it.

22 BY MR. WARSHAVSKY:

23 Q. This is the website we looked at before?

24 A. Yes.

25 Q. Can you tell me what this means where it says mint for

N21nher5

Estival - Cross

1 MR. WARSHAVSKY: So if we could put back up the  
2 redacted exhibit.

3 BY MR. WARSHAVSKY:

4 Q. Who is NFT Kings?

5 A. He's an NFT influencer.

6 Q. This is a text exchange you produced in this, correct?

7 A. Yes.

8 MR. WARSHAVSKY: We would offer it into evidence  
9 subject to the same restriction, your Honor.

10 MR. HARRIS: No objection, your Honor.

11 MR. WARSHAVSKY: Your Honor, can we refer it to the  
12 jurors.

13 THE COURT: Yes.

14 MR. WARSHAVSKY: Could we turn please to page 4 of  
15 this document.

16 THE COURT: I should have said "received."

17 (Plaintiff's Exhibit 242 received in evidence)

18 BY MR. WARSHAVSKY:

19 Q. I'm sorry, pages 3 and 4, so you can take a look at it. So  
20 here you are having a discussion with NFT Kings?

21 A. Yes.

22 Q. And are these generally discussions about how the  
23 MetaBirkins are being received by whales?

24 A. Can you ask a --

25 Q. Maybe that is a tough one, since I don't know this.

N21nher5

Estival - Cross

1 MR. WARSHAVSKY: Maybe let's look at page 4 and 5.

2 BY MR. WARSHAVSKY:

3 Q. Here NFT Kings is asking about your royalty rate, is that  
4 right?

5 A. Yes.

6 Q. And he asked you for after sale and you say seven and a  
7 half percent, correct?

8 A. Yes.

9 Q. Then he asks you, "Personally or including OS fee?"

10 Is "OS" OpenSea?

11 A. Yes.

12 Q. You say, "Personally so 10," right?

13 So that means consumers pay a 10 percent royalty and  
14 two and a half goes to OpenSea, and seven and a half goes to  
15 you.

16 A. Yes.

17 Q. If we look at your last text here, can you read that?

18 A. Oh, Luxury tax -- luxury product luxury tax, maybe.

19 Q. Okay. You are talking about the MetaBirkins there as a  
20 luxury product?

21 A. Yes.

22 MR. WARSHAVSKY: Okay.

23 Can we turn to Plaintiff's Exhibit 100, please.

24 This is a very long exhibit, so I would ask to go to  
25 page 502.

N21nher5

Estival - Cross

1 A. Yes.

2 MR. WARSHAVSKY: Okay. If we keep going -- actually  
3 let's leave it there.

4 BY MR. WARSHAVSKY:

5 Q. You say you are a gonna make a big -- a big bag on  
6 MetaBirkin?

7 A. Yes.

8 Q. What did you mean by "big bag"?

9 A. He will sell it for a lot.

10 Q. Okay. When you're asking him, you say, "Can you do a shill  
11 post for me?" what do you mean by that?

12 A. To tell people about the project again.

13 Q. What would he tell people?

14 A. He did a post, like a link of the MetaBirkin.

15 MR. WARSHAVSKY: Okay. If we go to page 7.

16 THE WITNESS: I'm sorry. I just need the page.

17 BY MR. WARSHAVSKY:

18 Q. Your second text, I realize we all use salty language  
19 sometimes. What did you mean by, "You have a gem on your  
20 hands"?

21 A. It was a good project.

22 Q. And then your next text says, "Like ultimate shill post"?

23 A. Yes.

24 Q. What is an ultimate shill post as opposed to a regular  
25 shill post?



N21nher5

Estival - Cross

1 A. It's like an extra hyped one.

2 Q. An extra hyped one. Okay.

3 What would a shill post -- when you say a post, what  
4 do you mean by a post?

5 A. It kind of depends. This person and this text message, or  
6 in these text messages is like an NFT influencer. He tells  
7 people about cool projects, tells people like, you know, what  
8 they should be trying to get, what they shouldn't or what they  
9 should be buying and what they, you know, just like any  
10 influencer.

11 Q. Like a social media post by an influencer?

12 A. Pretty much, yeah.

13 Q. Could be on TikTok, Instagram, Twitter --

14 A. Correct.

15 Q. -- or whatever one of those social media posts?

16 Okay. Your counsel asked you earlier why you wanted  
17 the price to go high. And you said because you just wanted  
18 value to collectors?

19 A. I'm sorry. I didn't catch that.

20 Q. Your counsel asked you why you want the price to be high,  
21 you said you wanted the value to go up to provide value to  
22 collectors.

23 Do you remember that?

24 A. Yes.

25 Q. But you also make royalties, correct?